

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CURTIS VAUGHN JACKSON,

Plaintiff,

v.

R. BINKELE, et al.,

Defendants.

Case No. [18-cv-04098-EMC](#)

SCHEDULING ORDER

Docket Nos. 58, 59, 60, 61

This is a *pro se* prisoner's civil rights action under 42 U.S.C. § 1983 that is now before the Court for scheduling and miscellaneous matters.

The cognizable claims in this action are that: (1) several Defendants were deliberately indifferent to Plaintiff's safety by housing him at Salinas Valley; (2) several other Defendants were deliberately indifferent to his safety by not preventing or acting quickly enough to stop a fight he was involved in a few weeks after his arrival at Salinas Valley; and (3) several other Defendants were deliberately indifferent to his medical needs after the fight. *See* Docket No. 13 (order of service). Service of process was ordered on eleven Defendants. One Defendant (Lam) was later voluntarily dismissed. The remaining ten Defendants were originally represented by the California Attorney General, but since about June 2019, nine Defendants (i.e., Binkele, Erguiza, Gonzalez, Jah, Makela, Mindoro, Muniz, Patty, and Rawhoof) have been represented by the California Attorney General, and one Defendant (Schwarz) has been represented by private counsel.

Defendants filed a motion for summary judgment based on nonexhaustion of administrative remedies. Docket No. 29. After that motion was fully briefed but before it was ruled upon, the parties requested that the case be referred to Magistrate Judge Illman for a

1 settlement conference and otherwise stayed the case. Docket No. 45. The Court referred the case
2 to Magistrate Judge Illman for settlement. Docket No. 47. He has recently reported that the case
3 did not settle. Docket No. 55. The stay that was imposed to facilitate settlement proceedings is
4 **LIFTED**. It is now necessary to set some deadlines and make other rulings to move this case
5 toward resolution.

6 A. Motions For Summary Judgment:

7 1. Defendants' motion for summary judgment based on nonexhaustion of
8 administrative remedies is fully briefed and will be decided in due course. *See* Docket No. 29
9 (motion); Docket Nos. 33-35 (opposition); Docket No. 38 (reply). Defendants should file a
10 renewed notice of that motion, so that it will appear on the Court's calendar of motions needing to
11 be decided. Otherwise, no further submissions from the parties are expected for this motion.

12 2. A motion for summary judgment "re: administrative, yard, and medical claims"
13 was filed on October 31, 2019, by Defendants Binkele, Erguiza, Gonzalez, Jah, Makela, Mindoro,
14 Muniz, Patty, and Rawhoof. Docket No. 57. Plaintiff must file and serve his opposition to this
15 motion no later than **December 20, 2019**. Plaintiffs must file and serve their reply brief no later
16 than **January 3, 2020**.

17 3. Defendant Schwarz must file and serve his motion for summary judgment, if any,
18 no later than **January 3, 2020**. Plaintiff must file and serve his opposition to this motion no later
19 than **January 31, 2020**. Defendant Schwarz must file and serve his reply brief no later than
20 **February 14, 2020**.

21 B. Miscellaneous Requests

22 The request of Defendants Binkele, Erguiza, Gonzalez, Jah, Makela, Mindoro, Muniz,
23 Patty, and Rawhoof to file a long brief (i.e., 29 pages rather than the 25 pages permitted by Local
24 Rule 7-2) in support of their motion for summary judgment "re: administrative, yard, and medical
25 claims" is **GRANTED**. Docket No. 58. The motion filed at Docket No. 57 is permitted.

26 Defendant Schwarz filed a request for a briefing schedule so he could file his own motion
27 for summary judgment. The request is **GRANTED**. Docket No. 60. The briefing schedule is set
28 out above. Defendant Schwarz is reminded that he must file and serve a *Rand* notice at the time

1 he files his motion for summary judgment.

2 C. Motion To Seal Documents

3 Defendants Binkele, Erguiza, Gonzalez, Jah, Makela, Mindoro, Muniz, Patty, and
4 Rawhoof have filed a request to file several documents under seal. The documents consist of an
5 aerial photo of the prison yard, two photos of the prison yard with prisoners visible in the very far
6 distance, and a series of 18 photos of Plaintiff taken after the fight. Defendants urge that the
7 disclosure of these documents “may jeopardize the safety and security of inmates, staff,
8 correctional institutions, and the public.” Docket No. 59 at 2. They also state that they are willing
9 to allow Plaintiff to see, but not keep, the evidence because retention of the documents poses a risk
10 in that he or other prisoners might use the information contained in the photos to harm staff
11 depicted in the photos or to harm other prisoners, especially because the photos were taken in a
12 sensitive needs yard that houses some vulnerable prisoners. Docket No. 59-1 at 2-3.

13 The court may order a document filed under seal “upon a request that establishes that the
14 document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to
15 protection under the law (hereinafter referred to as ‘sealable’). The request must be narrowly
16 tailored to seek sealing only of sealable material.” N. D. Cal. Local Rule 79-5(b). There is a
17 strong presumption favoring the public’s right of access to court records which should be
18 overridden only for a compelling reason. *Hagestad v. Tragesser*, 49 F.3d 1430, 1433-34 (9th Cir.
19 1995). “Counseling against such access would be the likelihood of an improper use, ‘including
20 publication of scandalous, libelous, pornographic, or trade secret materials; infringement of fair
21 trial rights of the defendants or third persons; and residual privacy rights.’” *Valley Broadcasting*
22 *Co. v. United States District Court*, 798 F.2d 1289, 1294 (9th Cir. 1986) (citation omitted). In
23 prisoner cases, genuine concerns that the release of the document will endanger staff or prisoners
24 can support an order sealing a document.

25 Upon due consideration of the motion, the Court disagrees with Defendants’ assessment of
26 the risk of danger that would flow from making several of the pages of exhibits public. For this
27 reason, the court finds that Defendants have not overcome the presumption favoring public access
28 to court records for some of the documents. Accordingly, the application to file documents under

1 seal is **GRANTED IN PART AND DENIED IN PART**. Docket No. 59.

2 Exhibit 1 is an annotated aerial photo of the prison yard. Other than the annotations
3 identifying where several persons, a gate, a table, and a basketball court are located, the document
4 looks quite similar to aerial photos available on the internet. Once material is already in the public
5 domain, an argument for sealing it is rather weak. Exhibit 1 will not be sealed.

6 Exhibit 2 consists of two photos of Facility D Yard 1. There are some prisoners visible in
7 the far distance – the photos look as though the prisoners were at least 50 yards away from the
8 photographer. Although one can discern from context that there are prisoners in the photos, no
9 single person could be identified from the photos, especially because the prisoners are wearing
10 prison uniforms that look roughly the same. The photo's depiction of the yard does not show
11 anything a prisoner could not have learned by simply observing his surroundings while in that
12 yard. Exhibit 2 will not be sealed.

13 Exhibit 3 consists of 18 photos of Plaintiff, showing his wounds. Some of the photos are
14 close-ups, showing no prisoner other than Plaintiff (i.e., Docket No. 59-8 at 3, 4, 13, 14, 17, 18,
15 and 19), while the other photos have other prisoners and staff in the background some of whom
16 could identified from the photos (i.e., Docket No. 59-8 at 2, 5-12, 15-16). Only those photos that
17 have other prisoners and staff in the background warrant sealing. Photos of Plaintiff and various
18 parts of his body that do not have any other persons in the picture do not warrant sealing. For
19 example, it defies reason that Defendants take the position that photos depicting only a skinned
20 knee (*id.* at 17-19) or abrasion on Plaintiff's torso (*id.* at 13-14) need to be kept out of the public
21 record. Only the portions of Exhibit 3 that have other prisoners and staff in the background (i.e.,
22 Docket No. 59-8 at 2, 5-12, 15-16) will be sealed.

23 Defendants' plan to make the photos in Exhibits 1, 2, and 3 available to Plaintiff to see, but
24 not keep, is acceptable to the Court. The photos are not essential to the motion for summary
25 judgments filed in this action: the prison yard's layout could have been depicted with a line
26 drawing and the photos of Plaintiff's injuries are helpful but not essential to understanding the
27 limited nature of his claimed injuries. Even though they have not shown that most of the
28 documents should be kept sealed from the general public, Defendants convince the Court that


1 having the photos in the prison population presents the possibility for misuse of those photos by
2 prisoners. Prisoners might study the photos of the prison yard (i.e., Exhibits 1 and 2) and learn
3 about security vulnerabilities. And of greater concern, prisoners might study the photos in Exhibit
4 3 that do have identifiable people in the background to target staff and prisoners in the sensitive
5 needs yard where the photos were taken. Accordingly, Defendants do not have to serve on
6 Plaintiff a copy of Exhibits 1 or 2, or the portion of Exhibit 3 at Docket No. 59-8 at 2, 5-12, 15-16.
7 Defendants must, however, make those exhibits available to Plaintiff to view, in the manner
8 described in paragraphs 23-24 of the Lopez Declaration (Docket No. 59-1) submitted in support of
9 the motion to file documents under seal. That is, Plaintiff can submit a CDC Form 22 asking the
10 litigation coordinator to make the materials available to him for viewing for up to thirty minutes
11 under staff supervision.

12 D. The Proposed Stipulated Protective Order

13 The Defendants have filed a proposed stipulated protective order signed by private counsel
14 representing Defendant Schwarz and by a Deputy Attorney General representing the other nine
15 Defendants. Docket No. 61. The Court declines to sign the proposed stipulated protective order
16 because good cause has not been shown for a protective order. The general goal of the protective
17 order appears to be avoidance of public disclosure of information. But there is no explanation of
18 what the information is that cannot be disclosed to the public. It is not clear what makes this case
19 different from the hundreds of other prisoner civil rights actions that have been litigated in this
20 Court without need for a protective order. Additionally, Plaintiff is not a party to the stipulation,
21 and the Defendants do not explain why not. Nor do Defendants make any effort in the proposed
22 stipulated protective order to make it clear that Plaintiff is not bound by the protective order – and
23 some provisions might suggest to Plaintiff that he does have nondisclosure obligations under the
24 protective order.

25 **IT IS SO ORDERED.**

26 Dated: November 14, 2019

27 
28 EDWARD M. CHEN
United States District Judge